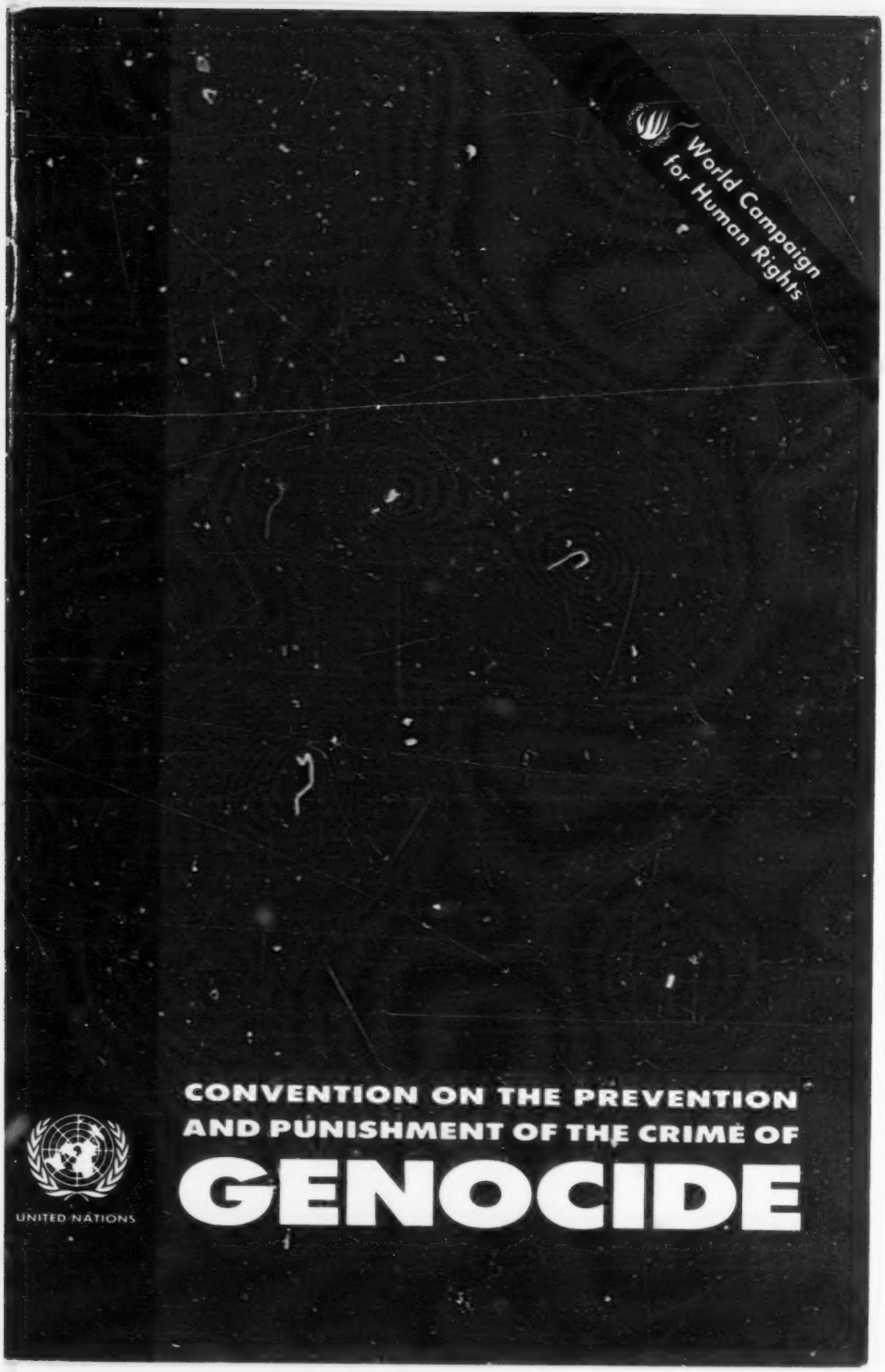
World Campaign
for Human Rights
CONVENTION ON THE PREVENTION
AND PUNISHMENT OF THE CRIME OF
GENOCIDE
UNITED NATIONS

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

UNITED NATIONS, NEW YORK, 1991

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INTRODUCTION

Genocide is a modern word for an old crime. It means the deliberate destruction of national, racial, religious or ethnic groups. Genocide is a word derived from the Latin words *genus*, meaning "a group", and *caedere*, meaning "to kill".

History had long been a grim witness to such acts, but the twentieth century saw them carried out on the largest and most inhuman scale known when the Nazi Government of Germany systematically annihilated millions of people because of their religion or ethnic origin. A shocked world then rejected any contention that such crimes were the exclusive concern of the State perpetrating them, and punishment of the guilty became one of the principal war aims of the Allied nations. The charter of the International Military Tribunal at Nuremberg, approved by the Allies in 1945, recognized that war criminals were not only those who had committed crimes against peace and violations of the laws or customs of war, but also those who had carried out "crimes against humanity", whether or not such crimes violated the domestic law of the country in which they took place.

During its first session in 1946, the United Nations General Assembly approved two resolutions relating to this subject. In the first, the Assembly affirmed the principles of the charter of the Nuremberg Tribunal. In the second—the basic resolution on genocide—the Assembly affirmed that genocide was a crime under international law and that those guilty of it, whoever they were and for whatever reason they committed it, were punishable. It asked for international cooperation in preventing and punishing genocide and it invited Member States to enact the necessary national legislation. In a final provision, the Assembly called for studies

aimed at creating an international legal instrument to deal with the crime. That was the origin of the Convention on the Prevention and Punishment of the Crime of Genocide unanimously adopted by the Assembly on 9 December 1948.

The term "convention" in international law means an agreement among sovereign nations. It is a legal compact which pledges every contracting party to accept certain obligations.

HOW THE CONVENTION WAS PREPARED

In 1946 the General Assembly requested the Economic and Social Council to undertake the necessary studies for drawing up a draft convention on the crime of genocide. In 1947 the Secretary-General, at the request of the Economic and Social Council, prepared a first draft of the convention and circulated it to Member States for comments. At that stage, the Secretary-General was assisted by a group of international law experts, among them the late Dr. Raphael Lemkin, who in 1944 had coined the term "genocide". In 1948 the Economic and Social Council appointed an ad hoc Committee of seven members to submit to it a revised draft. The Committee did so, and after a general debate the Council decided on 26 August to transmit the draft to the General Assembly. At a Paris session of the Assembly the draft was debated by the Legal Committee and adopted by the Assembly on 9 December 1948.

THE DEFINITION OF GENOCIDE IN THE CONVENTION

Genocide, the Convention declares, is the committing of certain acts with intent to destroy—wholly or in part—a national, ethnic, racial or religious group as such.

What are the acts? First, actual killing. But it is possible to destroy a group of human beings without direct physical extermination. So the Convention includes in the definition of genocide the acts of causing serious bodily or mental harm; deliberate infliction of conditions of life "calculated to bring about" physical destruction; imposing measures to prevent birth; and, finally, forcibly transferring children of one group to another group. Those acts, the Convention states, constitute "genocide". In accordance with the Convention, related acts are also punishable: conspiracy to commit genocide, direct and public incitement to commit genocide, an attempt to commit the crime, and complicity in its commission.

TO PREVENT AND TO PUNISH

The Convention first declares that genocide, "whether committed in time of peace or in time of war", is a crime under international law which the contracting States "undertake to prevent and to punish".

Main principles established by the Convention are:

1) Contracting States are bound to enact the laws needed to give effect to the provisions of the Convention, in particular to provide effective penalties.

2) States undertake to try persons charged with those offences in their competent national courts.

3) Parties to the Convention agree that the acts listed shall not be considered as political crimes. Therefore, they pledge to grant extradition in accordance with their laws and treaties.

All those pledges are for national action. The Convention also envisages trial by an international penal tribunal

should one be set up and should the contracting parties accept its jurisdiction. Furthermore, it provides that any of the contracting States may bring a charge of genocide, or of any of the related acts, before the competent organs of the United Nations and ask for appropriate action under the Charter.

If there is a dispute between one country and another on the interpretation, application or fulfilment of the Convention, the dispute must be submitted to the International Court of Justice at the request of any of the parties.

WHO MAY BE PUNISHED?

Article IV of the Convention declares that those guilty of genocide and the other acts listed shall be punished "whether they are constitutionally responsible rulers, public officials or private individuals". That clause makes it impossible for a person to plead immunity because he is the head of a State or a public official.

QUESTION OF INTERNATIONAL PENAL JURISDICTION

During discussion by the Assembly's Legal Committee in 1948, international penal jurisdiction was considered carefully. As a result, the idea is envisaged and provided for in article VI of the Convention. Further, the Assembly adopted, in addition to the Convention, a resolution which contained three provisions.

First, it recognized that "in the course of development of the international community there will be an increasing need of an international judicial organ for the trial of certain crimes under international law".

Second, it invited the International Law Commission to study both the desirability and the possibility of establishing such an international judicial organ "for the trial of persons charged with genocide, or other crimes over which jurisdiction will be conferred upon that organ by international Conventions".

Third, it requested the International Law Commission, in carrying out its task, to give attention to the possibility of establishing a Criminal Chamber of the International Court of Justice.

After studying that question, the Commission concluded that an international criminal court was both possible and desirable but recommended that it be a separate institution rather than a Criminal Chamber of the International Court. Assembly committees submitted draft statutes for such a separate court. By consensus, however, the General Assembly agreed that the problems raised by that matter were closely related to the question of defining aggression and to the draft code of offences against the peace and security of mankind. It postponed consideration of an international criminal jurisdiction until it could consider reports on those related questions.

PARTIES TO THE CONVENTION

All Member States of the United Nations are entitled to become parties to the Convention. Some of them signed the Convention in Paris immediately after its passage by the Assembly on 9 December 1948. By 31 December 1949, the date set for closing the Convention for signature, 40 States

had signed. Non-member States, invited by the General Assembly, have signed as well as Member States.

A legal compact like the Convention does not become binding on mere signature. It has to be ratified by each signatory country according to its constitutional processes. The "instrument of ratification", a communication formally signifying ratification, is then deposited with the Secretary-General.

The Convention provided that after 31 December 1949 no more signatures would be accepted. However, Member States, as well as non-members invited by the Assembly, may accede to the Convention by depositing "instruments of accession" with the Secretary-General.

The Convention came into force on 12 January 1951, 90 days after 20 States had ratified or acceded to it. Under its provisions, the Convention is renewable in successive periods of five years for countries that have not denounced it.

"Denunciation" is the term for the procedure of withdrawing from the Convention. Any country can give notice of such withdrawal six months before the expiration of the current period for which it is bound. If, as a result of such denunciations, there are fewer than 16 nations bound by it, the Convention will cease to be in force.

RATIFICATIONS AND ACCESSIONS

As of 1 January 1991, instruments of ratification, accession or succession to the Convention had been deposited by 101 Governments:

Afghanistan
Albania
Algeria
Antigua and Barbuda
Argentina
Australia
Austria
Bahamas
Bahrain
Barbados
Belgium
Brazil
Bulgaria
Burkina Faso
Byelorussian SSR
Cambodia
Canada
Chile
China[1]
Colombia
Costa Rica
Cuba
Cyprus
Czechoslovakia
Democratic People's Republic of Korea
Denmark
Ecuador
Egypt
El Salvador
Ethiopia
Fiji
Finland
France
Gabon
Gambia
Germany[2]
Ghana

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[1] Ratified on behalf of the Republic of China on 19 June 1951. The Government of the Republic of China represented China in the United Nations until 25 October 1971, when the General Assembly decided, by resolution 2758 (XXVI), "to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place they unlawfully occupied at the United Nations and in all the organizations related to it".

[2] The German Democratic Republic acceded to the Convention on 27 March 1973 and the Federal Republic of Germany on 24 November 1954. On 3 October 1990 the Federal Republic of Germany and the German Democratic Republic united to form one sovereign State under the designation of "Germany".

Greece
Guatemala
Haiti
Honduras
Hungary
Iceland
India
Iran (Islamic Republic of)
Iraq
Ireland
Israel
Italy
Jamaica
Jordan
Lao People's Democratic Republic
Lebanon
Lesotho
Liberia
Libyan Arab Jamahiriya
Luxembourg
Maldives
Mali
Mexico
Monaco
Mongolia
Morocco
Mozambique
Myanmar
Nepal
Netherlands
New Zealand
Nicaragua
Norway
Pakistan
Panama
Papua New Guinea
Peru
Philippines
Poland
Republic of Korea
Romania
Rwanda
Saint Vincent and the Grenadines
Saudi Arabia
Senegal
Spain
Sri Lanka
Sweden
Syrian Arab Republic
Togo
Tonga
Tunisia
Turkey
Ukrainian SSR
USSR
United Kingdom
United Republic of Tanzania
United States

Uruguay	Yugoslavia
Venezuela	Yemen[3]
Viet Nam	Zaire

Recognizing the importance of the Convention, the General Assembly has repeatedly urged States to ratify or accede to it as soon as possible. While the response has been gratifying, a number of eligible States have not yet done so.

The Assembly also recommended that parties to the Convention should take all possible measures to extend the application of the Convention to the territories for the conduct of whose foreign relations they are responsible. Australia, Belgium and the United Kingdom, the only parties to the Convention in that situation, have done so.

QUESTION OF TIME-LIMIT FOR PROSECUTION AND PUNISHMENT OF WAR CRIMES AND CRIMES AGAINST HUMANITY

In 1965, the question arose in some countries of applying the statute of limitations provided for in their national laws to the prosecution of war crimes and of crimes against humanity. The United Nations Commission on Human Rights

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[3]The People's Democratic Republic of Yemen (Democratic Yemen) acceded to the Convention on 9 February 1987, and the Yemen Arab Republic acceded to it on 6 April 1989. These States merged to form a single sovereign State called the Republic of Yemen (Yemen) on 22 May 1990, and informed the Secretary-General that "all treaties and agreements concluded between either [of the two States] and other States and international organizations in accordance with international law which are in force on 22 May 1990 will remain in effect".

requested the Secretary-General to undertake a study of the problems raised in international law by war crimes and crimes against humanity and a study of legal procedures to ensure that no period of limitation should apply to such crimes. On the basis of that study, the Commission began, in 1966, to prepare a draft Convention.

The matter was taken up in 1967 by the General Assembly, which in 1968 completed and adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Convention entered into force on 11 November 1970. Article I of the Convention, which defines crimes to which no statutory limitation shall apply, irrespective of the date of commission, lists among those crimes "the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide".

OTHER ACTIVITIES OF THE UNITED NATIONS RELATED TO THE GENOCIDE CONVENTION

Various subjects debated by United Nations bodies, such as the preparation of a draft code of offences against the peace and security of mankind; the punishment of war criminals and of persons guilty of crimes against humanity; apartheid and measures to be taken against nazism and other totalitarian ideologies and practices based on incitement to hatred and racial intolerance, have also raised questions connected with the Genocide Convention.

STUDY OF THE QUESTION OF THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

In 1969, the Economic and Social Council approved the decision of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to undertake a study on the prevention and punishment of the crime of genocide. In 1971, the Sub-Commission appointed one of its members, Nicodème Rubashyankiko, as Special Rapporteur to study the question of genocide. The study was completed in 1978. It included a historical survey of the development of the concept of genocide, a detailed account of the preparation of the Convention on the Prevention and Punishment of the Crime of Genocide, a discussion of the relationship between genocide and war crimes, crimes against humanity and apartheid; an evaluation of the effectiveness of existing international measures concerning genocide and the possibility of taking further international action; and a review of constitutional and legislative provisions concerning genocide. Among the recommendations put forward by the Special Rapporteur were that the Commission on Human Rights should set up ad hoc committees to inquire into allegations of genocide brought to the knowledge of the Commission by a Member State or an international organization, and that the General Assembly should be called upon to resume consideration of an international criminal jurisdiction.

At its 1982 session, the Sub-Commission decided that the "Study on the question of the prevention and punishment of the crime of genocide" should be revised and updated. In 1983, with the approval of its parent bodies, the Sub-Commission appointed one of its members, Benjamin Whitaker, as Special Rapporteur to perform this task. He

presented his revised and updated study to the Sub-Commission in 1985. Among the proposals dealt with in that study were prevention of genocide, early warning, an international body to deal with genocide and an international human rights court.

PROSPECTS FOR THE GENOCIDE CONVENTION

Throughout the world people aware of the importance and vital necessity of the Genocide Convention are working for its general acceptance and for its observance. The basis of their support transcends religious beliefs and crosses political lines.

Perhaps the best expression of the Convention's appeal was made by the late Gabriela Mistral, the famous Chilean poet who won the Nobel Prize for Literature in 1945.

"With amazing regularity genocide has repeated itself throughout history," she wrote. "Despite all advances in our civilization, the twentieth century must unfortunately be considered as one of those most guilty of the crime of genocide. Losses in life and culture have been staggering. But deep in his heart man cherishes a fervent yearning for justice and love; among small nations and minorities the craving for security is particularly alive. The success of the Genocide Convention today and its greater success tomorrow can be traced to the fact that it responds to necessities and desires of a universal nature. The word genocide carries in itself a moral judgement over an evil in which every feeling man and woman concurs."

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being conviced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

ARTICLE I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

ARTICLE II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or

in part, a national, ethnical, racial or religious group, as such:

a) Killing members of the group;

b) Causing serious bodily or mental harm to members of the group;

c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

d) Imposing measures intended to prevent births within the group;

e) Forcibly transferring children of the group to another group.

ARTICLE III

The following acts shall be punishable:

a) Genocide;

b) Conspiracy to commit genocide;

c) Direct and public incitement to commit genocide;

d) Attempt to commit genocide;

e) Complicity in genocide.

ARTICLE IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

ARTICLE V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation

to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

ARTICLE VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

ARTICLE VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

ARTICLE VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

ARTICLE IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Conven-

tion, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

ARTICLE X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

ARTICLE XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations,

extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

ARTICLE XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

ARTICLE XIV

The present Convention shall remain in effect for a period of 10 years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

ARTICLE XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the

Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

ARTICLE XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

a) Signatures, ratifications and accessions received in accordance with article XI;

b) Notifications received in accordance with article XII;

c) The date upon which the present Convention comes into force in accordance with article XIII;

d) Denunciations received in accordance with article XIV;

e) The abrogation of the Convention in accordance with article XV;

f) Notifications received in accordance with article XVI.

ARTICLE XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

ARTICLE XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

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